IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.2293 OF 2016

The New India Assurance Company Ltd.,
A Subsidiary of the General Insurance
Company of India Ltd., having one of its
Divisional Office at Adalat Road,
Aurangabad – Through its
Authorized Signatory.

...APPELLANT

VERSUS

(1) Mehrajbi Shafi Saiyyad,
Age-30 years, Occu:Household,
R/o-Mullawada, A.P. Erandol,
Dist-Jalgaon,

(2) Rehan Shafi Saiyyad,
Age-05 years, U/g of Resp. No.1,

(3) Kamarunisabi Rashid Saiyyad,
Age-60 years, Occu:Household,
R/o-As Above,

(4) Rashid Ismail Saiyyad,
Age-65 years, Occu:Nil,
R/o-As Above,

(5) Sayyad Bashir Sayyad Ismail,
Age-Major, Occu:Vehicle Owner,
R/o-House No. 1422, Mulla Wada,
A.P. Erandol, Dist-Jalgaon

...RESPONDENTS
(Resp. Nos. 1 to 4–Orig. Claimants
Resp. No. 5 -Orig. Resp. No.1).

...
Mr.A.B. Kadethankar Advocate for Appellant.
Mr.M.M. Bhokarikar Advocate for Respondents No. 1 to 4.
Mr.Deepak Joshi Advocate for Respondent No. 5.
...

WITH

FIRST APPEAL NO.3926 OF 2016

1) Smt. Mehrajbee Shafi Sayyad,
Age-30 years, Occupation:Household,

2) Chi. Rehan Shafi Sayyad,
Age-5 years, Occupation:Education
(Appellant No. 1 is the natural guardian as mother of appellant No. 2 hence representing)

3) Sau. Kamarunisabi Rashid Sayyad,
Age-60 years, Occupation:Household,

4) Shri. Rashid Ismail Sayyad,
Age-65 years, Occupation:Nil,

All R/o-Mullawada, Taluka-Erandone,
Dist-Jalgaon.

...APPELLANTS
(Orig. Claimants)

VERSUS

1) The New India Assurance Company Ltd.,
Through its Senior Divisional Manager,
Adalat Road, Aurangabad.

2) Shri Saiyyad Bashir Saiyyad Ismail,
Age-Major, Occu:Truck Owner, Business,
R/o-House No. 1422, Mullawada,
Erandole, Dist-Jalgaon

...RESPONDENTS
(Orig. Respondents)

...

Mr.M.M. Bhokarikar Advocate for Appellants.
Mr.A.B. Kadethankar Advocate for Respondent No. 1.
Mr.Deepak Joshi Advocate for Respondent No. 2.

...

CORAM: ANIL S. KILOR, J.

DATE : 25th MARCH, 2021

ORAL JUDGMENT :

1. Both these first appeals which are filed at the behest of insurance company as well at the behest of the claimants respectively, are taken together for hearing as in both these appeals the question is raised to the correctness and legality of the Judgment and order dated 25th March 2015 passed by the Commissioner for Workmen's Compensation and Judge, Labour Court at Jalgaon in Application WCA No. 28 of 2013.

2. In the First Appeal No.2293 of 2016 filed by the insurance company, the insurance company is praying for quashing and setting aside the impugned Judgment and order, whereas in the First Appeal No.3926 of 2016 filed by the

claimants, they are claiming enhancement of amount of compensation on the ground that the amount of '*Bhatta*' which the deceased used to receive, was not taken into consideration by the learned Commissioner while determining the annual income of the deceased.

3. I have heard the learned counsel for the respective parties.

4. The brief facts of the present case are as follows (the parties are referred as per their status before the Commissioner). It is the case of the claimants that husband of claimant No. 1, namely Shafi Rashid Saiyyad was working as a driver on the truck of respondent No. 1, bearing registration No. MH-18/M-1930 since last 2 to 2 and 1/2 years and he was drawing salary of Rs.8,000/- per month. On a fateful day i.e. 6th June 2012 when the deceased Shafiq was proceeding from Jalgaon to Silvasa (Gujrat) by carrying goods in the offending truck, at that time assistant driver Hasan Mehboob was driving the truck and at 3.30 a.m. the said driver Hasan drove the vehicle in rash and negligent manner, due to which offending

truck got turtled and husband of claimant No. 1 died in the said accident.

5. The truck was owned by respondent No. 1 and it was insured with respondent No. 2. The deceased, on the date of accident, was 35 years old and since he was in the employment of respondent No. 1, claim petition was filed under Section 22 of the Workmen' Compensation Act, 1923.

6. Learned Commissioner and Labour Court at Jalgaon, after scrutinizing oral as well as documentary evidence brought on record by the respective parties, partly allowed the claim petition and held the claimants entitled for Rs.7,28,560/- towards workmen's compensation along with interest at the rate of 12% .

7. Feeling aggrieved by the said Judgment and order dated 25th March 2015, both these appeals are filed.

8. Shri Kadethankar, learned counsel for the insurance company submits that though the deceased was in the

employment of respondent No. 1 but at the time of accident he was not driving the vehicle and therefore as per the policy the insurance company is not liable to pay any amount towards compensation for the death of the deceased.

9. Shri Kadethankar, learned counsel for the insurance company further opposes the prayer of the claimants in respect of enhancement of compensation and he submits that at the relevant time there was a cap for total salary and said cap was for Rs.8,000/-, therefore, learned Tribunal has rightly considered the monthly salary of deceased as Rs.8,000/- while determining the annual income of the deceased. It is submitted that in absence of any evidence in respect of payment of '*Bhatta*' to the deceased, allowing the enhancement by taking into consideration the amount of *Bhatta* is not permissible.

10. Per contra, Shri Bhokarikar, learned counsel for the claimants opposed the appeal of insurance company and submits that the employer i.e. respondent No. 1 has stated in his written statement that the deceased was driving the vehicle at the time

relevant time and therefore the Commissioner has rightly granted the compensation.

11. It is submitted that there is no dispute that one driver was covered under the insurance policy and in the present matter though at the time of accident two drivers were in the truck and the policy is only in respect of one driver, for any reason whatsoever the insurance company cannot deny its liability as regards one driver. For this purpose, he has placed reliance on the Judgment of Single Bench of this Court in the case of ***Shaikhar Sadanand Ghortane vs. Smt. Savita Mahadeo Gaikwad***[1]

12. Shri Bhokarikar, learned counsel for the claimants further submits that there was certificate filed on record showing that the deceased was receiving Rs.8,000/- towards salary and in addition he used to receive Rs.100/- per day towards *Bhatta* and the said amount has not been considered by the Tribunal on an erroneous count that no evidence has been produced by the claimants. It is submitted that while calculating the income of

1 2010 (2) AIR Bom. R 515

the deceased, because '*Bhatta*' is a part of the same, the Commissioner ought to have considered the case of the claimants as regards '*Bhatta*'. For this purpose, he has placed reliance on a Judgment of the Hon'ble the Supreme Court of India in the case of ***Jaya Biswal and others vs. Branch Manager, IFFCO TOKIO General Insurance Company Ltd. and another***[2]. He has also relied upon the Judgments of Himachal Pradesh High Court and Rajasthan High Court on the said issue.

13. To consider the rival contentions of the parties, I have gone through the record and proceedings of the Commissioner and Judge, Labour Court and also perused the Judgment impugned in the present appeals.

14. As regards the first contention of the learned counsel for the insurance company, Shri Kadethankar, that though the deceased was covered by the insurance policy as a driver, but because he was not driving the offending truck at the relevant time, he is not covered by the insurance policy, cannot be

2 AIR 2016 S.C. 956

accepted in view of the law laid down in the case of ***Shaikhar Sadanand Ghortane vs. Smt. Savita Mahadeo Gaikwad*** (supra), wherein the learned Single Judge of this Court has held thus:

> "8. There is no dispute that the owner of the truck had drawn Insurance Policy. The learned counsel for the appellant submits that the Policy shows that one driver is covered by the Policy of the Insurance Company. He submits that therefore, the Insurance Company is liable to reimburse the owner in respect of at least one driver. There is a finding of the Motor Accident Claims Tribunal as observed earlier that the deceased was travelling in the truck as a driver though, he was not actually driving the truck. The learned Judge of the Motor Accident Claims Tribunal rejects the claim against the Insurance Company because the deceased was not a person sitting on the steering wheel and actually driving the vehicle. He holds that it is that person alone, who could be said to be covered by the Insurance Policy. The reasons as given by the learned Judge cannot be accepted because such interpretation does not appear to me to be reasonable. The provisions of the Motor Vehicles Act in the form of Sections 140 to 168 are in the form of beneficial legislation. Therefore, liberal interpretation and an interpretation which would further ends of the such legislation has to be given. To my mind there could be as many drivers on truck as the owner may decide to have but only that number of drivers would stand covered for

whom the premium is paid. If the premium is paid for one driver alone, one person or one driver would be covered irrespective of the fact that two drivers may have died in the accident. In the instant case, there were two drivers engaged and premium for only one driver has been paid. The claim is only in respect of only one driver. Therefore, to my mind the Insurance Company cannot escape the liability. Had both the drivers died then the Insurance Company could have contended that it is not liable to reimburse in respect of both the drivers but in respect of one alone. Since in this case, one out of the two drivers engaged died and claim is laid for only one, the Insurance Company certainly is liable to reimburse. I find substance in the submission of the learned counsel for the appellant. I, therefore, allow the appeal and direct opponent No. 2 the Insurance Company to reimburse opponent No. 1 i.e. to pay the compensation as directed by the Motor Accident Claims Tribunal to the claimants. No order as to costs."

15. On the aforesaid touchstone, if the facts of the present case are considered, it is clear that though two drivers were travelling in the offending truck and one was driving the vehicle, irrespective of the fact whether deceased driver was driving the vehicle or not, the deceased is covered by the insurance policy, as it is not the case that the policy covers the insurance of one driver and the claim is made in respect of two

drivers. In that view of the matter, since as per the policy one driver is covered, the Commissioner has rightly held the insurance company liable to make the payment in this regard.

16. In the circumstances, the appeal filed by the insurance company fails.

17. As regards the enhancement of compensation is concerned, the certificate issued by the employer is available on record as document Exhibit C-10 which states that the deceased driver used to receive Rs.100/- per day towards '*Bhatta*' in addition to his salary of Rs.8,000/- per month. Though the Commissioner has observed in the impugned Judgment and order that there was a cap of Rs.8,000/- for the salary at the relevant time, however, the amount of '*Bhatta*' is allowance other than salary and therefore, there is no bar to consider the amount of '*Bhatta*' while considering the income of the deceased. In this regard, in a case of ***Jaya Biswal and others vs. Branch Manager, IFFCO TOKIO General Insurance Company Ltd. and another***, supra, the Hon'ble the Supreme Court of India in Para 23 of the Judgment, has observed thus:

> "23. Since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time of the accident, to arrive at the amount of wages, the learned Commissioner took into consideration the fact that the deceased was a highly skilled workman and would often be required to undertake long journeys outside the state in the line of duty, especially considering the fact that the vehicle in question had a registered National Route Permit. The wages of the deceased were accepted as Rs.4,000/- per month + daily bhatta of Rs.6,000/- per month, which amounts to a total of Rs.10,000/-.
> ……………………………….."

18. In the said case, the Hon'ble the Supreme Court of India has taken into consideration the total income as Rs.10,000/- after taking into consideration the amount of '*Bhatta*' as Rs.6,000/-.

19. Similarly, in the case of **Savitri Devi vs. Bharti Filling Station and another**[3], the learned Single Judge of Himachal Pradesh High Court in Para 23 of the Judgment, has observed thus:

3 2015(3) LLJ 662

"23. In the case of **Basantabai and another v. Shamim Bee and another, reported in 2012 ACJ 1858 (Vol.3)**, the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that '***bhatta***' received by deceased should form part of his income while computing compensation. It has been held as follows:

"(3) In respect of income of the deceased it is submitted that deceased was working as cleaner on the truck bearing registration No. MP 13-E 0553 and during the course of employment he met with an accident in which he sustained grievous injuries. During the treatment on 10.10.2005 he died at Government Hospital, Mandsaur. At the time of death he was 18 years of age and his salary was Rs.4,000 per month. Apart from his salary he was getting the dainik bhatta of Rs.50 per day. Exhs. P1 to P7 are the documents in respect of wages of the deceased. Learned counsel for the appellants submits that Basantabai in her statement has deposed that income of the deceased was Rs.3,000 per month, but she in her evidence has not stated that the deceased was not getting Rs.50 per day as ***bhatta*** and submitted that the learned Commissioner wrongly disbelieved the said part of the evidence and assessed his income at Rs.3,000/- per month.

(4) On the other hand, Mr. M. Upadhyay, learned counsel for respondent insurance company, supported the order

passed by Commissioner and submitted that ***bhatta*** is not a part of wages as defined in clause (m) of sub-section (1) of section 2 of the Workmen's Compensation Act, 1923. This question was considered by the Division Bench of Madhya Pradesh High Court at Gwalior Bench in the case of **Shakuntala v. Kanna Dangi, 2007 ACJ 2486**. Para 11 which is relevant reads as herein-below:

To determine the question whether the ***bhatta*** (daily allowance) is a part of wages for computing the compensation under Motor Vehicles Act and ultimately to determine the question of wages of a driver, we have to consider the evidence and if it has come in the evidence that he was also getting Rs.50 per day as daily allowance, whether the same can form part of wages. The term 'wages' has been defined in many Central Acts, such as, under the Payment of Wages Act, 1936; the Minimum Wages Act, 1948, the Industrial Disputes Act, 1947; and under the Workmen's Compensation Act, 1923, which are as under: Payment of Wages Act, 1936: Section 2(vi)--'wages' means all remuneration (whether by way of salary allowance, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed n respect of his employment or of work done in such employment and include--

(a) xxx

(b) xxx

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name):

(d) xxx

(e) xxx

Minimum Wages Act, 1948:

Section 2(h)--'wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include--

(I) the value of

(a) xxx

(b) any other amenity of any service excluded by general or special order of the appropriate Government;

(ii) xxx

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) xxx

Industrial Disputes Act, 1947:

(rr) 'wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment and includes:

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) xxx

(iii) xxx

Workmen's Compensation Act, 1923:

(m) 'wages' includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment; From a bare reading of the definitions of 'wages' under the Minimum Wages Act, 1948, Industrial Disputes Act, 1947 and the Workmen's Compensation Act, 1923, it is amply clear that the 'wages' means all remuneration whether by way of salary, allowance or otherwise expressed in terms of money or capable of being so expressed, payable to a person employed in respect of his employment or of work done in such employment and includes any additional remuneration, any travelling allowance or the value of any travelling concession or any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, shall form part of the wages. These definitions are quite exhaustive and it prima facie appears that any amount paid to the driver either as additional remuneration payable in terms of employment or any travelling allowance or any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, would be included in the definition of 'wages'. Therefore, any ***bhatta*** or daily allowance that is paid to the driver under any special contract as additional remuneration or as daily allowance may be considered as part of the wages but if any sum is paid for defraying any expenses towards food as and when the driver will go outside the city then it may not form part of the wages. For that the claimant has to prove that the amount of daily ***bhatta*** is paid as additional remuneration or as travelling allowance and it may depend from case to case and on the nature of the vehicle as well as the nature of duties and if it is found proved that the ***bhatta*** is paid as additional remuneration under the terms of contract for the purposes mentioned in the definition of 'wages' then as per the evidence on record the court may include the aforesaid ***bhatta*** as part of wages.

(6) For the above-mentioned reasons, the substantial question of law No. 2 framed by this court is answered in favour of the appellants by holding that ***bhatta*** is part of the wages for the purpose of computation of compensation."

20. In the case of **National Insurance Company Ltd., vs. Smt. Udi Bai and others**, learned Single Judge of

Rajasthan High Court Para 7 and of the Judgment, has observed thus:

> “7. As far as the contention that the daily allowance of Rs.50/- paid to the deceased-driver besides fixed montly salary of Rs. 3,000/- which according to learned counsel for the appellant was in the nature of travelling allowance is concerned, the same is not sustainable. The said allowance of Rs.50/- paid to the driver on daily basis was neither described to be travelling allowance, nor established to have been paid as a travelling allowance. The definition of the wages as given in Section 2(m) of the Act reads as under:
>
> “2(m) - “wages”, includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.”
>
> 8. The wages, therefore, includes any privilege or benefit, which is capable of being estimated in terms of money, other than travelling allowance, or value of travelling concession, or contribution towards pension, or provident fund, or any sum paid to cover and special expenses entailed by nature of his employment. The daily “Bhatta” (भत्ता) or daily allowance of Rs.50/- paid to

the driver/s is usually paid to him to meet their food expenses. The travelling allowance could only be paid for meeting incidental commuting expenses, which was not even the case set up by the employer in the present case, therefore, the daily " Bhatta " (भत्ता) or daily allowance is in nature of daily allowance paid otherwise than by way of travelling allowance, and has been rightly treat as part of 'wages' by the learned Commissioner. This certainly was a privilege of benefit given to the deceased workman during the course of his employment, which is only capable of being quantified in terms of money but was so quantified at Rs.50/- per day. The monthly wages thus arrived at Rs.4500/- has rightly been kept at Rs.4,000/- per month in terms of explanation (ii) to Section 4(1)(b) of the said Act, which reads as under:

"Explanation II.-Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be [four thousand rupees] only."

Thus, there is no error found in the order of the learned Workmen Compensation Commissioner when he has included the daily allowance of Rs.50/- while computing the monthly wages of the workman to determine the total compensation amount."

21. In the circumstances, I am of the opinion that the finding recorded by the learned Commissioner and Judge, Labour Court that there is no document available on record to show that the deceased used to receive '*Bhatta*', is contrary to record as the certificate Exhibit C-10 is on record. Moreover, from the above referred Judgments it is clear that the claimants are entitled for compensation after considering the amount of salary and '*Bhatta'* as income of the deceased.

22. Having observed so, I am of the considered view that the claimants are entitled for enhancement of compensation and in that view of the matter, First Appeal No. 3926 of 2016 needs to be partly allowed, and the impugned Judgment 25th March 2015 passed by the Commissioner for Workmen's Compensation and Judge, Labour Court at Jalgaon in Application WCA No. 28 of 2013 needs to be modified as under:-

Age factor	X 50% of monthly salary	+ 50% of Bhatta	Total
194.64	4000	1500	Rs.10,70,520
			- Rs.7,78,560
		Enhance Amount	**= Rs.2,91,960**

23. Accordingly First Appeal No. 2293 of 2016 is dismissed.

24. First Appeal No. 3926 of 2016 is partly allowed with modification in above terms.

25. The Insurance Company is directed to deposit the amount granted towards enhanced compensation along with interest at the rate of 12% from 6th July 2012 till its realization, within two months from the date of this Judgment, before the Commissioner for Workmen's Compensation and Judge, Labour Court at Jalgaon.

26. The claimants are permitted to withdraw the amount on deposit of amount before the Commissioner for Workmen's Compensation and Judge, Labour Court at Jalgaon by the Insurance Company.

[ANIL S. KILOR, J.]

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